

**Public Chapter 266**

**SENATE BILL NO. 279**

**By Haun**

Substituted for: House Bill No. 768

By Jackson

AN ACT To amend Tennessee Code Annotated, Title 56, Chapter 19, relative to mutual insurance companies other than life insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-19-125, is amended by designating the existing section as subsection (a) and by adding the following as a new subsection:

(b)(1) As used in this section, unless the context otherwise requires:

(A) "Eligible member" is a member whose policy is in force as of the date the mutual company's board of directors adopts a plan of conversion. A person whose policy is issued after the board of directors adopts the plan but before the plan's effective date is not an eligible member but shall have those rights set forth in subdivision (10) of this subsection.

(B) "Converted stock company" is a Tennessee domiciled stock company that converted from a Tennessee domiciled mutual company under this section.

(C) "Plan of conversion" or "plan" is a plan adopted by a Tennessee domestic mutual company's board of directors under this section to convert the mutual company into a Tennessee domiciled stock company.

(D) "Commissioner" is the Commissioner of Commerce and Insurance.

(2)(A) A mutual company seeking to convert to a stock company shall, by the affirmative vote of not less than two-thirds (2/3) of its board of directors, adopt a plan of conversion consistent with the requirements of subdivision (6) of this subsection.

(B) At any time before approval of a plan by the commissioner, the mutual company by the affirmative vote of

two-thirds (2/3) of its board of directors, may amend or withdraw the plan.

(3)(A) After adoption by the mutual company's board of directors, the plan shall be submitted to the commissioner for review and approval. The commissioner shall approve the plan upon finding that:

(i) the provisions of this subsection have been complied with;

(ii) the plan will not prejudice the interests of the members; and

(iii) the plan's method of allocating subscription rights is fair and equitable.

(B)(i) Prior to the members' approval of the plan, a mutual company seeking the commissioner's approval of a plan shall file the following documents with the commissioner for review and approval:

(1) the plan of conversion, including the independent evaluation of pro forma market value required by item (F) of subdivision (6) of this subsection;

(2) the form of notice required by item (B) of subdivision (4) of this subsection for eligible members of the meeting to vote on the plan;

(3) any proxies to be solicited from eligible members pursuant to subitem (ii) of item (C) of subdivision (4) of this subsection;

(4) the form of notice required by item (A) of subdivision (10) of this subsection for persons whose policies are issued after adoption of the plan but before its effective date; and

(5) the proposed charter and bylaws of the converted stock company.

Once filed, these documents shall be approved or disapproved by the commissioner within a reasonable time.

(ii) After the members have approved the plan, the converted stock company shall file the following documents with the commissioner:

(1) the minutes of the meeting of the members at which the plan was voted upon; and

(2) the revised charter and bylaws of the converted stock company.

(C) The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing the plan and the independent evaluation of the pro forma market value which is required by item (F) of subdivision (6) of this subsection.

(4)(A) All eligible members shall be given notice of and an opportunity to vote upon the plan.

(B) All eligible members shall be given notice of the members' meeting to vote upon the plan. A copy of the plan or a summary of the plan shall accompany the notice. The notice shall be mailed to each member's last known address, as shown on the mutual company's records, within forty-five (45) days of the commissioner's approval of the plan. The meeting to vote upon the plan shall not be set for a date less than sixty (60) days after the date when the notice of the meeting is mailed by the mutual company. If the meeting to vote upon the plan is held coincident with the mutual company's annual meeting of policyholders, only one (1) combined notice of meeting is required.

(C)(i) After approval by the commissioner, the plan shall be adopted upon receiving the affirmative vote of at least two-thirds (2/3) of the votes cast by eligible members.

(ii) Members entitled to vote upon the proposed plan may vote in person or by proxy. Any proxies to be solicited from eligible members shall be filed with and approved by the commissioner.

(iii) The number of votes each eligible member may cast shall be determined by the mutual company's bylaws. If the bylaws are silent, each eligible member may cast one (1) vote.

(5) Adoption of the revised charter of the converted stock company is necessary to implement the plan and shall be governed by the applicable provisions of the general corporation law. The revised charter may be adopted solely by the board of directors.

(6) The following provisions shall be included in the plan:

(A) The plan shall set forth the reasons for the proposed conversion.

(B)(i) The plan shall provide that all policies in force on the effective date of conversion shall continue to remain in force under the terms of those policies, except that any voting rights of the policyholders provided for under the policies or under this Code and any contingent liability policy provisions of the type described in Section

56-19-116 of this Code shall be extinguished on the effective date of the conversion.

(ii) The plan shall further provide that holders of participating policies in effect on the date of conversion shall continue to have the right to receive dividends as provided in the participating policies, if any.

(iii) The converted stock company may issue the insured a nonparticipating policy as a substitute for a participating policy upon the renewal date of a participating policy.

(C)(i) The plan shall provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of:

(1) a corporation organized and owned by the mutual company for the purpose of purchasing and holding all the stock of the converted stock company; or

(2) a stock insurance company owned by the mutual company into which the mutual company will be merged.

(ii) The subscription rights shall be allocated in whole shares among the eligible members using a fair and equitable formula. This formula may, but need not, take into account how the different classes of policies of the eligible members contributed to the surplus of the mutual company.

(D) The plan shall provide a fair and equitable means for the allocation of shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights received pursuant to item (C) of subdivision (6) of this subsection.

(E) The plan shall provide that any shares of capital stock not subscribed to by eligible members exercising subscription rights received under item (C) of subdivision (6) of this subsection shall be sold in a public offering through an underwriter. If the shares of capital stock not subscribed by eligible members is so small in number as to not warrant the expense of a public offering, the plan of conversion may provide for the purchase of the unsubscribed shares by a private placement or other alternative method approved by the commissioner that is fair and equitable to the eligible members.

(F) The plan shall set the total price of the capital stock equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by a qualified person. The pro forma market value may be the value that is estimated to be necessary to attract full subscription for the shares as indicated by the independent evaluation.

(G) The plan shall set the purchase price of each share of capital stock equal to any reasonable amount that will not inhibit the purchase of shares by members. The purchase price of each share shall be uniform for all purchasers except the price may be modified by the commissioner by reason of his consideration of a plan for the purchase of unsubscribed stock pursuant to item (E) of subdivision (6) of this subsection.

(H) The plan shall provide that any one (1) person or group of persons acting in concert may not acquire, through public offering or subscription rights, more than five percent (5%) of the capital stock of the converted stock company for a period of five (5) years from the effective date of the plan except with the approval of the commissioner. This limitation does not apply to any entity that is to purchase one hundred percent (100%) of the capital stock of the converted company as part of the plan of conversion approved by the commissioner or to a purchase of stock by a tax-qualified employee benefit plan pursuant to subscription grants granted to that plan as authorized under item (C) of subdivision (6) of this subsection and to a purchase of unsubscribed stock pursuant to item (E) of subdivision (6) of this subsection.

(7) The following provisions may be included in the plan:

(A)(i) The plan may provide that the directors and officers of the mutual company shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan as provided in subitem (i) of item (C) of subdivision (6) of this subsection. Those subscription rights shall be allocated among the directors and officers by a fair and equitable formula.

(ii) The total number of shares that may be purchased under subitem (i) of item (A) of subdivision (7) of this subsection may not exceed thirty-five percent (35%) of the total number of shares to be issued in the case of a mutual company with total assets of less than fifty million dollars (\$50,000,000) or twenty-five percent (25%) of the total shares to be issued in the case of a mutual company with total assets of more than five hundred million dollars (\$500,000,000). For mutual companies with total assets between fifty million dollars (\$50,000,000) and five hundred million dollars (\$500,000,000), the total number of shares that may be purchased shall be interpolated.

(iii) Stock purchased by a director or officer under subitem (i) of item (A) of subdivision (7) of this subsection may not be sold within one (1) year following the effective date of the conversion.

(iv) The plan may also provide that a director or officer or person acting in concert with a director or officer of the mutual company may not acquire any capital stock of the converted stock company for three (3) years after the effective date of the plan, except through a broker or dealer, without the permission of the commissioner. That provision may not apply to prohibit the directors and officers from purchasing stock through subscription rights received in the plan under subitem (i) of item (A) of subdivision (7) of this subsection.

(B) The plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase up to ten percent (10%) of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan as provided in subitem (i) of item (C) of subdivision (6) of this subsection. That employee benefit plan shall be entitled to exercise its subscription rights regardless of the amount of shares purchased by any other person.

(8) The board of directors may adopt a plan of conversion that does not rely in whole or in part upon the issuance to members of nontransferable subscription rights to purchase stock of the converted stock company if the commissioner finds that the plan does not prejudice the interests of the members, is fair and equitable, and is based upon an independent appraisal of the market value of the mutual company by a qualified person and a fair and equitable allocation of any consideration to be given eligible members. The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the plan may be approved by the commissioner.

(9) A plan shall become effective when the commissioner has approved the plan, the members have approved the plan, and the revised charter has been adopted.

(10)(A) All members whose policies are issued after the proposed plan has been adopted by the board of directors and before the effective date of the plan shall be given written notice of the plan of conversion. The notice shall specify the member's right to rescind that policy as provided in item (B) of subdivision (10) of this subsection within forty-five (45) days after the effective date of the plan. A copy of the plan or a summary of the plan shall accompany the notice. The form of the notice shall be filed with and approved by the commissioner.

(B) Any member entitled to receive the notice described in item (A) of subdivision (10) of this subsection shall be entitled to rescind his or her policy and receive a full refund of any amounts paid for the policy or contract within ten (10) days after the receipt of the notice.

(11)(A) Upon the conversion of a mutual company to a converted stock company according to the provisions of this subsection, the corporate existence of the mutual company shall be continued in the converted stock company. All the rights, franchises, and interests of the mutual company in and to every type of property, real, personal, and mixed, and things in action thereunto belonging, is deemed transferred to and vested in the converted stock company without any deed or transfer. Simultaneously, the converted stock company is deemed to have assumed all the obligations and liabilities of the mutual company.

(B) The directors and officers of the mutual company, unless otherwise specified in the plan of conversion, shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are duly elected pursuant to the charter and bylaws of the converted stock company.

(12) No director, officer, agent, or employee of the mutual company or any other person shall receive any fee, commission, or other valuable consideration, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants and actuaries for services performed in the independent practice of their professions, even if the attorney, accountant or actuary is also a director of the mutual company.

(13) All the costs and expenses connected with a plan of conversion shall be paid for or reimbursed by the mutual company or the converted stock company except where the plan provides either for a holding company to acquire the stock of the converted stock company or for the merger of the mutual company into a stock insurance company as provided in subitem (i) of item (C) of subdivision (6) of this subsection. In those cases, the acquiring holding company or the stock insurance company shall pay for or reimburse all the costs and expenses connected with the plan.

(14) If the mutual company complies substantially and in good faith with the notice requirements of this subsection, the mutual company's failure to give any member or members any required notice does not impair the validity of any action taken under this subsection.

(15) Any action challenging the validity of or arising out of acts taken or proposed to be taken under this subsection shall be commenced within thirty (30) days after the effective date of the plan.

SECTION 2. This act shall take effect on becoming a law, the public welfare requiring it.